

ESTATE OF JULIA TIEYAH

IBIA 83-7

Decided June 8, 1983

Appeal from an order denying petition for reopening issued by Administrative Law Judge Sam E. Taylor in Indian Probate No. H-49-65.

Affirmed as modified.

1. Indian Probate: Reopening: Standing to Petition for Reopening

An adult who participated in the original probate hearing into a deceased Indian's estate lacks standing to petition for reopening.

2. Indian Probate: Wills: Holographic Will

A holographic will that is not attested by two disinterested witnesses is not valid.

APPEARANCES: Valoris Marie Stroup, pro se. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE MUSKRAT

On December 6, 1982, the Board of Indian Appeals received a notice of appeal from Valoris Marie Stroup (appellant), appearing pro se, from an order denying petition for rehearing in the estate of Julia Tieyah (decendent). The order appealed from was entered by Administrative Law Judge Sam E. Taylor on October 5, 1982. The Board affirms that order as modified by this opinion.

Background

Julia Tieyah, an unallotted Comanche Indian, died on November 9, 1964, at the age of 48. A hearing into her estate was held by Examiner of Inheritance Kent R. Blaine on March 11, 1965. In an order determining heirs, issued on April 9, 1965, the examiner found that decendent died intestate and was survived by six sons and three daughters, three of whom were minors. Under the Oklahoma laws of intestate succession, decendent's estate was distributed equally to these nine children, with homestead rights in one 5-acre tract being given to the three minor children until each of them reached majority or the rights were otherwise disposed of by law.

On September 16, 1982, appellant, through counsel, filed a petition for rehearing, alleging that on April 12, 1963, decendent wrote a holographic will

which she gave to appellant. Appellant alleged that she attempted to present this holographic will to the Bureau of Indian Affairs (BIA) after the hearing, but was not permitted to make it part of the record in decedent's estate.

On October 5, 1982, Administrative Law Judge Sam E. Taylor denied the petition. The Judge did not consider whether the petition met the requirements for reopening under 43 CFR 4.242, but held that the alleged holographic will was inadequate under 43 CFR 4.260 because it was not witnessed by two disinterested persons. Appellant appealed this decision to the Board. No briefs were filed.

Discussion and Conclusions

Although termed a petition for rehearing, appellant's petition must be considered under the reopening procedures of 43 CFR 4.242(h) rather than the rehearing procedures in 43 CFR 4.241. Section 4.241(a) clearly provides that a petition for rehearing must be filed within 60 days from the date on which the decision appealed from was mailed. Appellant's petition was filed approximately 17 years after the date of the order.

[1] Section 4.242(h) provides that a petition for reopening filed more than 3 years after the date of the decision must show that "the petitioner had no actual notice of the original proceedings." The transcript of the hearing held in this estate shows that appellant, who was an adult at the time, was present at and participated in the hearing into decedent's estate. Appellant, therefore, lacks standing to petition for reopening. Estate of Edwin (Edward) J. Scarborough, 11 IBIA 179 (1983); Estate of Rebecca B. Coe, 8 IBIA 164 (1980); Estate of Russell Harold Bobb, 5 IBIA 92 (1976).

[2] Furthermore, even if the Board were to reach the merits of this petition, the Administrative Law Judge correctly found that the letter presented by appellant does not meet the requirements for a will set forth in 43 CFR 4.260(a). An Indian can dispose of trust property through a holographic will, but that will must meet the requirements for a testamentary document, including attestation by two disinterested witnesses. Estate of Emory Dennis Juneau, 7 IBIA 164 (1979). The letter presented is not so witnessed.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CER 4.1, the October 5, 1982, order appealed from is affirmed as modified by this opinion.

Jerry Muskrat
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Franklin D. Arness
Administrative Judge